

UNITED STATES DISTRICT COURT
District of Maine

CITY OF BANGOR,)	
)	
Plaintiff,)	
)	
vs.)	Civil No. 02-183-B-S
)	
CITIZENS COMMUNICATIONS)	
COMPANY,)	
Defendant/Third-Party)	
Plaintiff,)	
vs.)	
)	
BARRETT PAVING MATERIALS, INC.,)	
et al.,)	
Third-party Defendants)	

ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the Court on July 6, 2004 her Recommended Decision (Docket #381). Defendant Citizens Communications Company filed its objection to the Recommended Decision on July 23, 2004 (Docket #386 and #391) and Plaintiff City of Bangor filed its response to Defendant's objection on August 9, 2004 (Docket #398). Defendant Citizens Communications Company has also filed a request for oral argument (Docket #387 and #392) pursuant to Local Rule 7(f).

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the

Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in her Recommended Decision, and determine that no further proceeding is necessary.

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is hereby AFFIRMED.
2. Defendant Citizens Communications Company's Motion for Setting Hearing and Oral Argument (Docket #387 and #392) is DENIED.
3. Defendant Citizens Communications Company's Motion for Summary Judgment (Docket #315) is GRANTED IN PART, by entering JUDGMENT in favor of Citizens on Counts IX and XII (private nuisance claims), XIII (strict liability/ultra-hazardous activity), and XVI (punitive damages) of the City's Second Amended Complaint (Docket #175).

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 14th day of October 2004.

BANGOR, CITY OF

represented by **W. SCOTT LASETER**
MCKENNA, LONG & ALDRIDGE
303 PEACHTREE STREET, NE
SUITE 5300
ATLANTA, GA 30308
(404) 527-4000
Email: slaseter@mckennalong.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

WILLIAM B. DEVOE
EATON PEABODY
P. O. BOX 1210

BANGOR, ME 4402-1210
947-0111
Email: wdevoe@eatonpeabody.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

P. ANDREW HAMILTON
EATON PEABODY
P. O. BOX 1210
BANGOR, ME 4402-1210
947-0111
Email: ahamilton@eatonpeabody.com

**CITIZENS COMMUNICATIONS
COMPANY**

JAY C. JOHNSON
MAYER, BROWN, ROWE & MAW
1909 K STREET, N.W.
WASHINGTON, DC 20006-1101
202-263-3000
Email:
jcjohnson@mayerbrownrowe.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
FRIEDMAN, GAYTHWAITE, WOLF
& LEAVITT
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 4112-4726
761-0900
Email: mgaythwaite@fgwl-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

**BARRETT PAVING MATERIALS
INC**

BRUCE W. HEPLER
FRIEDMAN, GAYTHWAITE, WOLF
& LEAVITT
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 4112-4726
(207) 761-0900
Email: bhepler@fgwl-law.com
ATTORNEY TO BE NOTICED

JOHN S. HAHN
MAYER, BROWN, ROWE & MAW
1909 K STREET, N.W.
WASHINGTON, DC 20006-1101
(202) 263-3000
Email: jhahn@mayerbrownrowe.com

JULIE ANNA POTTS
MAYER, BROWN, ROWE & MAW
1909 K STREET, N.W.
WASHINGTON, DC 20006-1101
202/263-3370

JOHN P. MCVEIGH
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLC
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Fax : 791-3111
Email: jmcveigh@preti.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID B. VAN SLYKE
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLC
ONE CITY CENTER
PO BOX 9546
PORTLAND, ME 04101-9546
791-3000

**UNITED STATES ARMY CORPS
OF ENGINEERS**

Email: dvanslyke@preti.com
ATTORNEY TO BE NOTICED

JOHN H. DE YAMPERT, JR.
U.S. DEPARTMENT OF JUSTICE
TORTS BRANCH, CIVIL DIVISION
PO BOX 14271
WASHINGTON, DC 20044-4271
(202) 616-4022
Email: john.deyampert@usdoj.gov
LEAD ATTORNEY

STEPHEN E. CROWLEY
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL & NATURAL
RESOURCES DIVISION
ENVIRONMENTAL DEFENSE
SECTION
P.O. BOX 23986
WASHINGTON, DC 20026-3986
202-514-0165
Email: stephen.crowley@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MICHELLE T. DELEMARRE
U.S. DEPARTMENT OF JUSTICE
P.O. BOX 14271
WASHINGTON, DC 20044-4271
(202) 616-4037
Email: michelle.delemarre@usdoj.gov
ATTORNEY TO BE NOTICED

DEAD RIVER COMPANY

represented by

CHARLES A. HARVEY, JR.
HARVEY & FRANK
TWO CITY CENTER
P.O. BOX 126
PORTLAND, ME 4112
207-775-1300

**HONEYWELL INTERNATIONAL
INC**

represented by

Email: harvey@harveyfrank.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBERT S. FRANK
HARVEY & FRANK
TWO CITY CENTER
P.O. BOX 126
PORTLAND, ME 4112
207-775-1300
Email: frank@harveyfrank.com
ATTORNEY TO BE NOTICED

FRANCIS G. KELLEHER
GOODWIN, PROCTOR & HOAR
EXCHANGE PLACE
53 STATE STREET
BOSTON, MA 2109-2881
617-570-1000
Email: fkelleher@goodwinprocter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GREGORY A. BIBLER
GOODWIN PROCTOR LLP
EXCHANGE PLACE
BOSTON, MA 02109
(617) 570-1000
Email: gbibler@goodwinprocter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
VERRILL & DANA
1 PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112
(207) 774-4000
Email: smahoney@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

UGI UTILITIES INC

ROBERT L. BRENNAN
GOODWIN PROCTOR LLP
EXCHANGE PLACE
BOSTON, MA 02109
(617) 570-1000
Email: rbrennan@goodwinprocter.com
ATTORNEY TO BE NOTICED

DOUGLAS A. GRAUEL
NELSON, KINDER, MOSSEAU &
SATURLEY, P.C.
99 MIDDLE STREET
represented by MANCHESTER, NH 03101
603-647-1800
Email: dgrauel@nkms.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAY VARON
FOLEY & LARDNER
3000 K STREET NORTHWEST
WASHINGTON, DC 20007
(202) 672-5300
Email: jvaron@foleylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BEAZER EAST INC

E. TUPPER KINDER
NELSON, KINDER, MOSSEAU &
SATURLEY, P.C.
99 MIDDLE STREET
MANCHESTER, NH 03101
(603) 647-1800
JEFFREY A. THALER
BERNSTEIN, SHUR, SAWYER, &
represented by NELSON
100 MIDDLE STREET
P.O. BOX 9729

**CENTERPOINT ENERGY
RESOURCES CORP**

PORTLAND, ME 4104-5029
207-774-1200
Email: jthaler@bssn.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CHARLES T. WEHLAND
JONES, DAY
77 WEST WACKER DRIVE
SUITE 3500
represented by CHICAGO, IL 60601-1692
312-782-3939
Email: ctwehland@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID S. SHERMAN, JR
DRUMMOND, WOODSUM &
MACMAHON
245 COMMERCIAL ST.
P.O. BOX 9781
PORTLAND, ME 04104
207-772-1941
Fax : 207-772-3627
Email: dshermanecf@dwmlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ALBERT D. STURTEVANT
JONES, DAY
77 WEST WACKER DRIVE
SUITE 3500
CHICAGO, IL 60601-1692
312-782-3939
Email: adsturtevant@jonesday.com
ATTORNEY TO BE NOTICED

LAURA M. EARL
JONES, DAY
77 WEST WACKER DRIVE
SUITE 3500

ROBINSON SPEIRS, JR

CHICAGO, IL 60601-1692
312-782-3939
Email: learl@jonesday.com
ATTORNEY TO BE NOTICED

represented by **KEVIN M. CUDDY**
CUDDY & LANHAM
470 EVERGREEN WOODS
BANGOR, ME 4401
(207) 942-2898
Email: kmc@cuddylanham.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JULIE ANN MACMANNIS

represented by **KEVIN M. CUDDY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

NANCY S DAWSON

represented by **KEVIN M. CUDDY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ELIZABETH H SPEIRS

represented by **KEVIN M. CUDDY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARY S PRICE

represented by **KEVIN M. CUDDY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBINSON SPEIRS

represented by **KEVIN M. CUDDY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED